

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLU INVESTMENTS, LLC,

Plaintiff,

v.

INTRASPECT GROUP, INC., *et al.*,

Defendants.

Case No. C10-0626RSL

ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT
AGAINST TODD BUCKNER

This matter comes before the Court on plaintiff's motion for entry of partial summary judgment against defendant Todd Buckner. Plaintiff claims that Buckner breached a personal guaranty that secures a loan that plaintiff made to defendant Intraspect Group.¹ Plaintiff seeks judgment against Buckner on the principal sum of \$104,693.05 plus interest at the contract rate of 40.56% per annum, and attorney's fees.

By order dated October 14, 2010, the Court denied plaintiff's first motion for partial summary judgment against Buckner (Dkt. #59, the "order"). In the order, the Court rejected Buckner's contentions that the guaranty was procured by fraud and that he

¹ The Court previously granted plaintiff's motion for default judgment against Intraspect Group.

1 did not sign the guaranty. Order at p. 3. The Court found that the only issue precluding
2 summary judgment was Buckner's defense that the interest rate in the underlying loan
3 was usurious. The Court explained that it was not usurious if the loan was obtained for a
4 commercial purpose, but plaintiff failed to meet its burden of showing that the business
5 purpose exception precludes Buckner from asserting a usury defense. For that reason, the
6 Court denied the motion without prejudice to the parties' ability to raise the issue in a
7 second, adequately-supported motion.

8 Plaintiff has now filed a second motion for summary judgment and established that
9 the loan was made for a business purpose and was not part of a consumer transaction.
10 RCW 19.52.080 (stating that corporations and persons may not plead the defense of usury
11 "if the transaction was primarily for . . . business purposes"); Declaration of Fred
12 Auzenne, (Dkt. #65) ("Auzenne Decl.") at ¶ 4 (explaining that Buckner contacted him
13 and requested that plaintiff provide financing to Intraspect Group "to provide working
14 capital to Intraspect Group and its subsidiaries for use in their respective businesses."); id.
15 at ¶ 5 (explaining that he believed, based on Buckner's representations, that the loan was
16 for business purposes). Despite the fact that the Court's order made clear that the
17 existence of a business purpose was a key issue, Buckner's response to this motion did
18 not address the issue or present any contrary evidence. Accordingly, plaintiff has
19 established that the loan was for business purposes, so Buckner's usury defense fails as a
20 matter of law.

21 Rather than responding to the usury issue, Buckner's response focuses on whether
22 a contract existed. To the extent that Buckner is attempting to relitigate the issue of
23 whether he signed the guaranty and whether it was fraudulently obtained, the order
24 already resolved those issues. Buckner also argues, for the first time, that the guaranty
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1 was unsupported by consideration. However, at the time the guaranty was executed,
2 Intraspex had already defaulted on the loan and requested that a portion of the past due
3 balance be converted into a promissory note guaranteed by Buckner. Auzenne Decl. at ¶¶
4 8-11. Therefore, PLU offered consideration: the agreement to new financing terms.

5 Buckner also contends that Larry Parsons, the Intraspex employee who gave him
6 the guaranty to sign, “acted as PLU’s agent and for PLU’s or his own benefit by
7 presenting the guaranty to [Buckner] without identifying the same or disclosing [its]
8 contents, and knowingly or negligently representing the Guaranty to be part of the stack
9 of accounting documents.” Response at p. 4. Buckner’s declaration does not state that
10 Parsons was PLU’s agent, nor is there any evidence in the record to support that assertion.
11 Moreover, Buckner was responsible for reading the document he signed, which was titled
12 “Guaranty” and repeatedly referenced a guaranty. See, e.g., Cox v. Ocean View Hotel
13 Corp., 533 F.3d 1114, 1122 (9th Cir. 2008). In light of the clear wording of the
14 document, Buckner’s protestations of ignorance are untenable.

15 Accordingly, the motion for partial summary judgment against Todd Buckner
16 (Dkt. #64) is GRANTED. Buckner is liable to plaintiff in the amount of \$147,156.55,
17 which includes the principal sum of \$104,693.05 plus accrued interest of \$42,463.50
18 through November 1, 2010 at the rate of 40.56% per annum. Buckner is also liable for
19 interest on the unpaid balance of the principal sum at the rate of 40.56% per annum until
20 paid. Finally, because the guaranty provides for the recovery of attorney’s fees, costs and
21 expenses, Buckner must pay plaintiff’s reasonable attorney’s fees and costs incurred in
22 bringing this action. Plaintiff may file a statement of its costs and fees within thirty days
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1 of the date of this order.

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3 DATED this 22nd day of December, 2010.

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6 Robert S. Lasnik
7 United States District Judge
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